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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

LUIS ALEJANDRO MADRIGAL AND LAMBERTO AVITIA PEREZ, Plaintiffs, v. UNITED STATES OF AMERICA, ET AL, Defendants.	Case No. EDCV 15-00261-VAP (DTBx) **ORDER GRANTING DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS WITHOUT LEAVE TO AMEND (DOC NO. 52)** **[Motion filed on August 3, 2015]**

Plaintiffs' Third Amended Complaint (("TAC") Doc. No. 41) alleges that San Bernardino County violated Plaintiffs' civil and constitutional rights by improperly obtaining disclaimers of seized property and failing to sufficiently provide notice to Plaintiffs of the forfeiture of the property. (TAC ¶¶ 47-48.)

I. BACKGROUND

A. Factual Background

In June 2012, a San Bernardino County law enforcement task force seized money and drugs from a house located at 1007 West D Street in Ontario, California. (TAC ¶ 13.) Plaintiffs Luis Madrigal and Lamberto Perez were in the house where the drugs and money were seized and they disclaimed ownership in writing. (TAC ¶ 23.) Alleging that the money was being used in connection to drug transactions, the San Bernardino District Attorney's Office filed civil forfeiture proceedings and a California Superior Court granted the application and ordered that the money be forfeited to the State, in part based on Plaintiffs' signed disclaimers. (TAC ¶¶ 21-23.)

B. Procedural Background

On February 11, 2015, Plaintiffs filed their initial complaint which was repeatedly amended by stipulations to dismiss all defendants except Defendant San Bernardino County and all claims except the Monell liability claim. (Doc. Nos. 30, 40, 46, 47, 49.) On August 3, 2015, Plaintiffs filed a motion for summary judgment and Defendant filed a motion for judgment on the pleadings. (Doc. Nos. 50 & 52.)

II. LEGAL STANDARD

The standard for assessing a Rule 12(c) motion for judgment on the pleadings is the same as the standard for a Rule 12(b)(6) motion to dismiss. Enron Oil Trading & Trans. Co. v. Walbrook Ins. Co., Ltd., 132 F.3d 526, 529 (9th Cir. 1997). In considering a motion for judgment on the pleadings, a court must accept as true all material allegations in the complaint and must construe those allegations in the light most favorable to the plaintiff. Pillsbury, Madison & Sutro v. Lerner, 31 F.3d 924, 928 (9th Cir. 1994). A court should grant a motion for judgment on the pleadings only when the moving party is entitled to judgment as a matter of law. Fajardo v. County of Los Angeles, 179 F.3d 698, 699 (9th Cir. 1999).

III. DISCUSSION

Plaintiffs' complaint alleges that Defendant County of San Bernardino is liable under section 1983 because it failed to afford Plaintiffs with the "opportunity to contest the forfeiture of the currency" and that its policies and customs were the reason for the violation and injury. Defendant argues that Plaintiffs' claim fails because the San Bernardino District Attorney was acting as a state official when conducting the forfeiture proceeding. (Mot. at 6.)

To state a claim under section 1983, a plaintiff must allege (1) a violation of a right secured by the Constitution or laws of the United States, and (2) that the alleged violation was committed by a person acting under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988). A state actor is not a "person" for purposes of liability under section 1983. Will v. Michigan Dep't of State Police, 491 U.S. 58, 66 (1989) ("We hold that neither a State nor its officials acting in their official capacities are 'persons' under § 1983."); Howlett v. Rose, 496 U.S. 356, 365 (1990) ("Persons" does not include 'the State and arms of the State ... ' which receive sovereign immunity from the Eleventh Amendment.").

A. Was the District Attorney a State Actor?

Defendant argues that Plaintiffs have provided no authority standing for the proposition that a county can be held liable for the conduct of a district attorney, when that district attorney is acting as a state official. (Reply at 2.) This is not true. While there is no bright line rule on this issue, Plaintiffs have cited a number of cases that are instructive.

In McMillian, the Supreme Court describes the analysis used to determine whether a policymaker acts on behalf of the state or local government. McMillian v.

Monroe Cnty., 520 U.S. 781. The Court was clear that the inquiry is not undertaken in a "categorical, 'all or nothing' manner," but rather that the "cases on the liability of local governments under section 1983 instruct us to ask whether governmental officials are final policymakers for the local government in a particular area, or on a particular issue." Id. at 785. The "inquiry is dependent on an analysis of state law." Id. at 786.

Here, based on an analysis of relevant California law, the Court concludes that the San Bernardino District Attorney acts as local policymaker when adopting and implementing policies and procedures related to civil forfeiture of personal property. In Pitts v. Cnty. of Kern, 17 Cal. 4th 340, 363 (1998), the California Supreme Court concluded that a "district attorney represents the state, not the county, when preparing to prosecute and when prosecuting crimes, and when establishing policy and training employees in these areas." The Pitts court noted that it was "not seeking to make a characterization of [California district attorneys] that will hold true for every type of official activity they engage in," but instead focused on the district attorney's function "when preparing to prosecute and when prosecuting criminal violations of state law." Id. at 352.

The San Bernardino District Attorney's function at issue here is distinguishable from that confronted in Pitts. Here, Plaintiffs challenge the District Attorney's failure to provide proper notice upon forfeiture of personal property. (Opp. at 13.) The conduct at issue involves not prosecutorial strategy, but rather administrative oversight of civil forfeiture proceedings. The decision in Weiner v. San Diego County, 210 F.3d 1025 (9th Cir. 2000) is of no avail to Defendant either. In Weiner, the Ninth Circuit held that a "district attorney act[s] on behalf of the state, not the county, in deciding to prosecute" a person for a crime, but acknowledged that "this is not to say that district attorneys in California are state officers for all purposes. Id. at 1032. To the contrary, California law suggests that a "district attorney is a county officer for some purposes." Id. at 1031.

In Goldstein v. City of Long Beach, 715 F.3d 750, 751 (9th Cir. 2013), the Ninth Circuit found that California district attorneys act as local policymakers when adopting and implementing internal policies and procedures related to the use of jailhouse informants. Under the court's analysis in Goldstein, other provisions indicating that the San Bernardino District Attorney here acts on behalf of the county include the following:

- District attorney is paid "out of the county treasury," Cal. Gov. Code § 28000, and the board of supervisors "shall prescribe the compensation" of the district attorney, Cal. Gov. Code § 25300.
- Necessary expenses incurred "in the prosecution of criminal cases" are "county charges," and the district attorney must "account for all money received by him in his official capacity and pay it over to the treasurer" of the county board of supervisors. Cal. Gov. Code § 29601.
- The district attorney shall render legal services to the county without fee," Cal. Gov. Code § 26520; is the "legal adviser" for the county if there is no county counsel, Cal. Gov. Code § 26526; cannot "in any way advocate" against the county, Cal. Gov. Code § 26527; and may defend the county against the State of California in a state eminent domain proceeding, Cal. Gov. Code § 26541.

- Counties are required to defend and indemnify the district attorney in an action for damages. Cal. Gov. Code §§ 815.2, 825. The county's obligation to defend and indemnify the district attorney in an action for damages is a "crucial factor [that] weighs heavily[.]" Streit v. Cnty. of Los Angeles, 236 F.3d 552, 562 (9th Cir. 2001).

Read as a whole, these authorities reveal that although a district attorney acts on behalf of the state when conducting prosecutions that is not the case where he or she is carrying out administrative policies such as those here. Accordingly, the Court finds that the San Bernardino District Attorney was acting as a local government official when conducting the forfeiture proceeding.

B. Municipality Liability

Section 1983 applies to the actions of "persons" acting under color of state law. West, 487 U.S. at 48. A local governmental unit or municipality can be sued as a "person" under section 1983. Here, the San Bernardino County District Attorney is a "sub-unit" of the County of San Bernardino, which is the proper defendant because

that is the governmental entity considered to be "person" under section 1983.[1] See Monell v. Department of Social Servs., 436 U.S. 658, 690 (1978).

In Monell, the Supreme Court held that "a municipality can be found liable under § 1983 only where the municipality itself causes the constitutional violation at issue. Monell, 436 U.S. at 694. A section 1983 plaintiff may establish municipal liability in one of three ways. First, the plaintiff may prove that a city employee committed the alleged constitutional violation pursuant to a formal governmental policy or a "longstanding practice or custom which constitutes the 'standard operating procedure' of the local governmental entity." Second, the plaintiff may establish that the individual who committed the constitutional tort was an official with "final policy-making authority" and that the challenged action itself thus constituted an act of official governmental policy. Third, the plaintiff may prove that an official with final policy-making authority ratified a subordinate's unconstitutional decision or action and the basis for it. Gillette v. Delmore, 979 F.2d 1342, 1346-47 (9th Cir. 1992).

[1] Municipal departments and bureaus are generally not considered “persons” within the meaning of 42 U.S.C. § 1983. Hervey v. Estes, 65 F.3d 784, 791 (9th Cir. 1995).

Here, Defendant argues that Plaintiffs have failed to plead a sufficient factual basis for Monell liability because their claims are all conclusory, have not identified specific unconstitutional practices or policies, and have not identified an incident, other than the current one, as a source of liability. (Mot. at 8.) Plaintiffs argue their complaint factually alleged a clear constitutional violation - Defendant's failure to serve Plaintiffs with notice of the civil forfeiture proceedings. (Opp. at 14; TAC ¶¶47-48.)

To survive a motion to dismiss or judgment on the pleadings, Plaintiffs must allege "enough facts to state a claim to relief that is plausible on its face" and "asks for more than a sheer possibility that a defendant has acted unlawfully." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570; Ashcroft v. Iqbal, 556 U.S. 662, 677 (2009). Plaintiffs allege only this incident in support of their claim; however, Monell liability may not be based on a single incident of unconstitutional action by a non-policymaking employee. Davis v. City of Ellensberg, 869 F.2d 1230, 1233 (9th Cir. 1989).

Plaintiffs' complaint does not allege more than mere legal conclusions and a formulaic recitation of the elements. The Fourth Cause of Action in the Third Amended Complaint alleges that the County of San

Bernardino engaged in an unconstitutional act without identifying a formal governmental policy, longstanding practice, or custom as Monell requires. (TAC ¶¶ 47-48.) Moreover, Plaintiffs do not allege that a "final policy-making authority" committed or ratified the unconstitutional act as a part of an official government policy. Hence, Plaintiffs have failed to state a claim for Monell liability under the pleading standards of Twombly and Iqbal.

C. Leave to Amend

Federal Rule of Civil Procedure 15(a) provides that a Court "should freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a)(2). Although liberally granted, leave to amend is not automatic. Jackson v. Bank of Hawaii, 902 F.2d 1385, 1387 (9th Cir. 1990). The Ninth Circuit considers a motion for leave to amend under five factors: bad faith, undue delay, prejudice to the opposing party, futility of amendment, and whether plaintiff has already amended the complaint. In re W. States Wholesale Natural Gas Antitrust Litig., 715 F.3d 716, 738 (9th Cir. 2013) (quoting Allen v. City of Beverly Hills, 911 F.2d 367, 373 (9th Cir.1990)).

Plaintiffs do not seek leave to amend in bad faith; nevertheless, allowing leave to amend would cause undue delay. This is not a complex case, yet Plaintiffs have

added claims and dismissed defendants by amending their complaint through stipulation three times already. (See Doc. Nos. 30, 40, 46.) The deadline to amend the pleadings was June 29, 2015. (Doc. No. 32.) At the motion hearing, Plaintiffs' counsel said he needed to do more research in order to state a Monell claim against Defendant, but failed to describe any additional facts that could support such a claim. Moreover, the complaint was filed on February 11, 2015, over six months ago, has been amended three times, and no explanation offered as to why such research has not already been undertaken.

Allowing Plaintiffs to amend the complaint would be futile. First, Plaintiffs have not been able to state a claim having three chances to do so. Second, Plaintiffs' motion for summary judgment as to their single Monell claim fails to identify specific unconstitutional practices or policies as required by Monell. See supra Part III.B. When questioned about the lack of facts giving rise to Monell liability at the motion hearing, Plaintiffs were not able to articulate an incident, other than the current one, as a source of liability. Giving Plaintiffs more time to research alternative sources of liability would be futile since Monell is the only way to bring a constitutional claim against a municipality. Monell, 436 U.S. at 694.

Finally, while Defendant has not shown prejudice, the strong showing of the other factors warrants granting the motion for judgment on the pleadings without leave to amend. See Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003).

IV. CONCLUSION

For the foregoing reasons, the Court GRANTS Defendant's motion for judgment on the pleadings without leave to amend and renders Plaintiffs' motion for summary judgment MOOT.

Dated: September 3, 2015

Virginia A. Phillips

VIRGINIA A. PHILLIPS
United States District Judge